

C-9

Opinion

1957

October 31

Miss Ruth O. Morgan
Deputy Commissioner
Labor Department
State House
Concord, New Hampshire

Dear Miss Morgan:

A few days ago you orally requested the opinion of this office as to whether a stepchild would qualify as a dependent within the meaning of the Workmen's Compensation Act, RSA 281:2, VII.

This is a difficult question and the answer is by no means clear. Regardless of which way you rule, it is a matter which very likely will have to be determined by the courts in the final analysis.

The section of the act referred to above, after listing the various categories of dependents, further defines dependents to include a common law wife or husband and posthumous children. It can be argued that if the Legislature had intended step-children to be within the category of dependents, they would have included them with the common law wife or husband and posthumous children, in their more specific designation. However, it is the opinion of this office that a stepchild would qualify as a dependent within the meaning of the act provided that the stepparent had actually assumed the relation of a parent to the stepchild.

RSA 167:2.3, make a stepparent legally liable for the support of a stepchild provided that he has actually assumed the relation of a parent to the stepchild. RSA 165:19 further provides for the legal duty of a stepparent to support his stepchild. It therefore seems logical to hold that under the Workmen's Compensation Act a stepchild would qualify as a dependent of his stepparent who has actually assumed the relation of parent to him and has thereby become legally liable for his support. In other words, if the stepparent has all the rights of a parent in relation to the stepchild, it would seem that the intention of the Legislature would certainly be to allow the stepchild the same benefits under the Workmen's Compensation Act as a natural child.

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Attorney-General

Miss Ruth Morgan

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would have. Furthermore, I think it is pretty well known that the courts in this State have construed the act liberally.

The majority of courts of other states which have passed on this same question hold that if the stepparent actually stands in place of the parent to the stepchild, and has supported him, and the stepchild is, in fact, dependent upon the stepparent for such support, the stepchild does come within the meaning of the term, dependent, as used in this act. We believe that if the same question were presented to the Supreme Court of this State it would probably follow this majority rule.

Sincerely yours,

John J. Zimmerman
Assistant Attorney General

JJZ/lt